



# RIGHTS STUFF

A Publication of The City of Bloomington  
Human Rights Commission

City of Bloomington

November 2013

Volume 171

## Can a Woman Who Has Frequent Seizures Be a Mammography Technician?

Andrea Olsen worked for the Capital Regional Medical Center (CRMC) as a mammography technician. Her job duties included positioning patients in the mammogram machine, controlling the table movement and collecting specimens. She is over 40 and had unpredictable epileptic seizures.

Olsen had several seizures at work. One of those times, she hit her head on the counter. After she had three more seizures at work, she was placed on paid administrative leave. While she was on leave, she saw a neurologist, who submitted a letter approving her return to work. But when she went back to work, she had a seizure that caused her to fall and injure her head; she needed staples to close the wound.

CRMC tried to make accommodations to reduce the chance she would have seizures. They removed mold, tried different cleaning agents, assigned patients who wore a lot of perfume to other technicians, installed anti-glare filters on lights, eliminated scrolling on computers and educated her co-workers on epilepsy. Nevertheless, her seizures continued. After she had two seizures while examining patients, CRMC decided she could not safely continue doing this job. CRMC transferred her to a clerical position, where she experienced two more seizures on the job. She was then placed on unpaid administrative leave.

In 2011, Olsen notified CRMC that thanks to new medication, her seizures were now under control. CRMC offered to reinstate her to her mammography technician job, but she refused. CRMC then fired her. She sued, alleging disability and age discrimination, and lost. (The Court did not explain why she didn't return to work once her seizures were under control.)

To be a qualified person with a disability under the Americans with Disabilities Act (ADA), a person has to be able to do the essential functions of her job, with or without reasonable accommodations. One of Olsen's essential job functions was to do mammograms safely. But according to the Court, Olsen's seizures "posed a direct threat to the health and safety of herself and others." She lost consciousness at work several times and incurred significant injuries. And her seizures posed a risk to patients under her care as well. CRMC tried to accommodate her, but none of its measures eliminated the frequency or severity of her seizures.

Nor did she prevail on her age complaint. The Court said it did not matter whether or not the hospital replaced her with a younger employee, and whether or not her supervisor had once asked her if she wanted to work part-time because she was nearing retirement. She had not shown she was qualified for the job. The case is Olson v. CRMC, 713 F. 3d 1149 (8th Cir. 2013).

### BHRC Staff

*Barbara E. McKinney,*  
Director

*Barbara Toddy,*  
Secretary

### Commission Members

*Byron Bangert, Chair*

*Carolyn Calloway-Thomas,*  
Vice Chair

*Valeri Houghton*

*Michael Molenda*

*Beth Applegate*

*Alice Tischler*

### Mayor

*Mark Kruzan*

### Corporation Counsel

*Margie Rice*

**BHRC**  
**PO BOX 100**  
**Bloomington IN**  
**47402**  
**349.3429**  
**human.rights@**  
**bloomington.in.gov**



## Who's the Boss?

Maetta Vance is an African American woman who began working for Ball State University in 1989 as a substitute server in the banquet and catering division of dining services. She was promoted to part-time catering assistant in 1991 and to full-time catering assistant in 2007.

Vance alleged that Sandra Davis, a white woman who worked for the banquet and catering division as a catering specialist, repeatedly harassed her and created a hostile work environment for her. Vance said that Davis glared at her, slammed pots and pans around her, intimidated her, blocked her on the elevator and often gave her "weird" looks.

Davis did not have the power to fire Vance, although she did have some authority over Vance. The U.S. Supreme Court was faced with the question as to whether someone who does not have the power to hire or fire an employee could still be a "supervisor." If Davis was a

supervisor, Ball State could be vicariously liable for her alleged racial harassment. If Davis was only a co-worker, it would be harder to hold Ball State liable. In that case, Vance would have to prove negligence on Ball State's part, a tougher burden to meet.

In June, the Court ruled in Ball State's favor. The Court, in an opinion written by Justice Alito, said, "We hold that an employer may be vicariously liable for an employee's unlawful harassment only when the employer has empowered that employee to take tangible employment action against the victim, i.e., to effect a 'significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.'" The Court said that just having the ability to direct another employee's tasks does not make one a supervisor. The Court rejected the U.S. Equal Employment Opportunity Commission's definition of supervisor, which relied on the number of tasks or assignments

that the person directs, as being too vague to be of practical use. Justice Ginsburg, writing the dissent for herself and three other justices, said "The Court today strikes from the supervisory category employees who control the day-to-day schedules and assignment of others, confining the category to those formally empowered to take tangible employment actions." She said that if a co-worker harasses you, you can walk away or tell her to "buzz off." But a "supervisor's slings and arrows, however, are not so easily avoided. An employee who confronts her harassing supervisor risks, for example, receiving an undesirable or unsafe work assignment or an unwanted transfer. She may be saddled with an excessive workload or with placement on a shift spanning hours disruptive of her family life . . . . Facing such dangers, she may be reluctant to blow the whistle on her supervisor," whether or not that supervisor can fire her.

The case is Vance v. Ball State University, 2013 WL 315228 (U.S. Supreme Court 2013).

## Gentlemen's Club Settles Race and Retaliation Lawsuit

The U.S. Equal Employment Opportunity Commission (EEOC) recently announced that it had reached a settlement with Danny's Cabaret, a gentlemen's club in Jackson, Mississippi. According to the EEOC, the cabaret subjected four African American female entertainers to less advantageous terms and conditions of employment than

white entertainers, including openly segregated work schedules. The EEOC said that when one of the women complained, the cabaret retaliated by cutting their work hours and forcing one of them to quit.

Under the terms of the settlement, Danny's Cabaret will pay

the women \$50,000. It will also implement new policies and practices designed to prevent racial discrimination and retaliation, conduct supervisor and employee training on anti-discrimination and retaliation laws and establish a confidential complaint procedure.



## Woman Loses Discrimination Case

Suriya Smiley, a Palestinian and Lebanese woman, began teaching part-time at Columbia College in 1994. Near the end of the fall 2008 semester, one of the nine students in her Radio Studio Operations class filed an internal complaint about her. He said the following:

- On the first day of class, Smiley approached him and said, "You're a Jew, right?" He asked her why she asked that, and she said, "I could tell by your nose and your last name. I'm an Arab."
- A few weeks later, Smiley told him she had been at a deli over the weekend and said, "Damn, those Jews know some good food."
- The next week, Smiley asked the complaining student and another student to look at a CD which contained explicit photos of Smiley.
- The next week, Smiley asked

the complaining student if he knew a recent graduate. When he said no, she said, "I thought all Jews knew everyone." She asked to take a picture of him, and he declined. She asked, "Are you too religious of a Jew to take a picture?" At the end of the class, she came very close to him, smirked and said, "Bye, Sweetie."

He said that being in her class made him very uncomfortable.

Members of the Columbia College administration met with the student and he repeated his claims. They then met with Smiley, who denied many of the claims, but admitted that she "goofs around" with her students. She said she knew she had hurt the student's feelings, but "it's not going to hurt a regular student." The administration concluded that Smiley had not followed professional decorum in the classroom. They fired her, and she sued, alleging race and/or national origin discrimination.

Smiley alleged that Columbia should have conducted a more thorough investigation by talking to more than just the one student who had complained about her. The school submitted evidence that they investigated Smiley using the same method as it had other teachers about whom they had received complaints. They did not talk to fewer students in her case because of her race and/or national origin. Nothing in the school's policy required a more thorough investigation than it had conducted.

She also complained that a member of the administration told her, "I'm not here for you. I'm here for the students." She said this showed that the school wanted her employment to end. The Court disagreed, saying the statement just showed that the school's priority was its students.

The case is Smiley v. Columbia College Chicago, 714 F. 3d 998 (7th Cir. 2013).

## Conflicting Disabilities

Shyanna Gretz, a six-year-old girl, was all set to begin first grade at Morrison-Gordon Elementary School in Athens, Ohio. She has autism and was to be accompanied by her service dog. But on the first day of class, she was told she could not go to Morrison because the woman who would have been her teacher is allergic to dogs. The school said that she would have to attend classes at East

Elementary. Her mother objected to that, saying a transfer would be disruptive to Shyanna and would have meant a longer bus ride for her.

Schools have to provide reasonable accommodations to students with disabilities, including allowing them to be accompanied by their service dogs. But schools also have to provide

reasonable accommodations to their employees, including teachers, and keeping dogs away from teachers with allergies might well be a reasonable accommodation. For now, Shyanna will be attending first grade at Beacon School, a school for students with special needs that she has attended in the past. She will attend either Morrison or East next year, giving the school system time to develop a plan to meet everyone's needs.



## **Bloomington King Commission Announces Funding for "A Day On! Not A Day Off"**

Mayor Mark Kruzan announced that the City of Bloomington Dr. Martin Luther King, Jr. Commission has funding available for local organizations offering service and educational activities for volunteers on "A Day On! Not A Day Off."

"Martin Luther King, Jr. Day presents an excellent opportunity for us to enhance community condition and collaborations. The City of Bloomington would like to directly thank these supporters - the Community Foundation of Bloomington and Monroe County, and Service for Peace. We are making all funds we receive from these supporters available to local groups to help them acquire materials and supplies to be used by volunteers," Kruzan said.

Organizations are invited to create projects that are dynamic and relevant, combine meaningful service and thoughtful reflection and provide volunteers with opportunities for sustained service and ongoing community involvement. These projects need to take place on and around January 20, 2014, and during the 40 Days of Peace period. Eligible groups include nonprofit organizations, businesses, faith organizations, schools, community and neighborhood organizations, public and private agencies, student organizations and groups that serve veterans or military families. City of Bloomington departments and City-sponsored commissions must partner with non-City organizations to apply for funding.

A total of \$29,000 is available. Grant amounts will depend upon the number and quality of proposals, with amounts based partially on the numbers of participants; projects using the greatest numbers of volunteers will receive more funding than those with fewer volunteers.

Projects that include continued service and those that involve disadvantaged youth, veterans or military families in service activities or as recipients of service are particularly encouraged. For more information and an application, go to [www.bloomington.in.gov/mlk](http://www.bloomington.in.gov/mlk) or call Craig Brenner at 349-3471. Groups are encouraged to register their activities even if not applying for funding. The deadline to request funding is November 15.

---

## **Prisons Must Comply With the ADA**

The Americans with Disabilities Act (ADA) prohibits state and local governments from discriminating on the basis of disability when they provide services. Covered services include imprisonment.

Recently, the U.S. Department of Justice announced that it had reached a settlement with the South Carolina Department of Corrections. According to Justice, South Carolina prisons did not allow inmates with HIV to participate in services and

programs available to other inmates, such as drug treatment and work release. The prisons required that all inmates with HIV be housed in "HIV-only" dorms in the highest security facilities, regardless of their security classification. They required inmates with HIV to wear clothing or identification that disclosed their HIV status. And they denied inmates with HIV the opportunity to work in the cafeterias or canteens at the prisons.

Under the terms of the agreement, South Carolina prisons will now integrate inmates with HIV into the general population, will not require them to identify their status and will provide them with job opportunities without regard to their status. The prisons will designate ADA compliance officers at each facility and will revise their grievance policies.